

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 973

Introduced by Assembly Member Audra Strickland

February 26, 2009

An act to amend Section 305.6 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 973, as amended, Audra Strickland. Minors: temporary custody.

Existing law authorizes a peace officer to take into temporary custody, *without a warrant*, a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety. However, existing law prohibits a peace officer from taking into custody, without a warrant, a newborn child who is in a hospital, who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs, who is the subject of an adoption petition ~~and an adoption placement agreement~~, and whose release to the prospective adoptive parents does not pose an immediate danger to him or her.

This bill, instead of that latter provision, would prohibit a peace officer from taking into custody, without a warrant, a newborn who is the subject of a proposed adoption, ~~before an adoption petition has been signed~~. This bill would also allow the Health Facility Minor Release Report to be signed by ~~the adoptive parent's attorney or authorized representative, or by~~ a licensed adoption agency, and allow the release of the minor to the adoptive parent's ~~attorney, authorized representative,~~ or a licensed adoptive agency, when it does not pose an immediate danger to the minor.

Existing law also requires the adoptive parent or parents or their representative to provide a copy of the Health Facility Minor Release Report and a copy of the petition for adoption to the local child protective services agency or to the peace officer who is at the hospital to take the minor into ~~custody~~. *custody or allows a copy of an adoption placement agreement signed by the placing birth parent or parents and the prospective adoptive parents to be used in place of the Health Facility Minor Release Report.*

~~This bill would allow a statement, signed by either the prospective adoptive parents or an authorized representative of the adoption agency, that the minor is the subject of a proposed adoption in lieu of a copy of the petition for adoption. This bill would also require a copy of a written statement from the prospective adoptive parents or adoption agency personnel agreeing to immediately notify local child protective services if the adoption plan is terminated.~~

~~Existing law requires the prospective adoptive parents or their representative to provide a copy of the petition for adoption and documents evidencing licensure as a foster parent.~~

~~This bill would instead require the prospective adoptive parents to submit a written statement of their intent to adopt the minor, and a written statement agreeing to notify local child protective services if adoption plan is terminated, in addition to documents evidencing licensure as a foster parent.~~

~~Existing law allows a copy of an adoption placement agreement signed by the placing birth parent or birth parents and the prospective adoptive parents to be used in place of the Health Facility Minor Release Report.~~

~~This bill would also allow a letter from a licensed adoption agency stating the minor is placed with the prospective adoptive parents for the purposes of adoption to be used in place of the Health Facility Minor Release Report.~~

This bill would instead require the prospective adoptive parent or parents or their representative or a representative of a licensed adoption agency to provide a fully executed copy of the Health Facility Minor Release Report and a written form signed by the prospective adoptive parent or parents or a representative of a licensed adoption agency that includes a declaration under penalty of perjury that the signer will immediately notify the local child welfare agency if the adoption plan is terminated, as provided.

Because the bill would require representations in the signed form to be made under penalty of perjury, thus changing the definition of a

crime, it would impose a state-mandated local program by expanding the crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 305.6 of the Welfare and Institutions
2 Code is amended to read:
3 305.6. (a) Any peace officer may, without a warrant, take into
4 temporary custody a minor who is in a hospital if the release of
5 the minor to a prospective adoptive parent *or a representative of*
6 *a licensed adoption agency* poses an immediate danger to the
7 minor's health or safety.
8 (b) (1) Notwithstanding subdivision (a) and Section 305, a
9 peace officer may not, without a warrant, take into temporary
10 custody a minor who is in a hospital if all of the following
11 conditions exist:
12 (A) The minor is a newborn who tested positive for illegal drugs
13 or whose birth mother tested positive for illegal drugs.
14 (B) The minor is the subject of a proposed adoption and a Health
15 Facility Minor Release Report, prescribed by the department, has
16 been completed by the hospital, including the marking of the boxes
17 applicable to an independent adoption or agency adoption planning,
18 and signed by the placing birth parent or birth parents, as well as
19 either the prospective adoptive parent or parents, ~~their attorney,~~
20 or an authorized representative of a licensed adoption agency, prior
21 to the discharge of the birth parent or the minor from the hospital.
22 Prior to signing of the Health Facility Minor Release Report, the
23 birth parent or ~~birth~~ parents shall be given a notice written in at
24 least 14-point pica type, containing substantially the following
25 statements:
26 (i) That the Health Facility Minor Release Report does not
27 constitute consent to adoption of the minor by the prospective

1 adoptive parent or parents, or any other ~~prospective adoptive parent~~
2 ~~or parents~~ person.

3 (ii) That the Health Facility Minor Release Report does not
4 constitute a relinquishment of parental rights for the purposes of
5 adoption.

6 (iii) That the birth parent or ~~birth~~ parents or any person
7 authorized by the birth parent or ~~birth~~ parents may reclaim the
8 minor at any time from the prospective adoptive parent or parents
9 or any other person to whom the minor was released by the
10 hospital, ~~until an adoption placement agreement or a relinquishment~~
11 ~~is signed by the birth parent or birth parents; as provided in~~
12 ~~Sections 8814.5, 8815, or 8700 of the Family Code.~~

13 This notice shall be signed by the birth parent or ~~birth~~ parents
14 and attached to the Health Facility Minor Release Report, *a copy*
15 *of which shall be provided to the birth parent or parents by hospital*
16 *personnel at the time the form is completed.*

17 (C) The release of the minor to a prospective adoptive parent
18 or parents, ~~their attorney~~, or an authorized representative of a
19 licensed adoption agency; does not pose an immediate danger to
20 the minor.

21 (D) An attorney or an adoption agency has provided
22 documentation stating that he or she, or the agency, is representing
23 the prospective adoptive parent or parents for purposes of the
24 adoption. In the case of an independent adoption, as defined in
25 Section 8524 of the Family Code, the attorney or adoption agency
26 shall provide documentation stating that the prospective adoptive
27 parent or parents have been informed that the child may be eligible
28 for benefits provided pursuant to the Adoption Assistance Program,
29 as set forth in Chapter 2.1 (commencing with Section 16115) of
30 Part 4 of Division 9, only if, at the time the ~~petition~~ *adoption*
31 *request* is filed, the child has met the requirements to receive
32 federal supplemental security income benefits pursuant to
33 Subchapter XVI (commencing with Section 1381) of Chapter 7
34 of Title 42 of the United States Code, as determined and
35 documented by the federal Social Security Administration.

36 (E) The prospective adoptive parent or parents or their ~~attorney~~
37 *representative*, or an authorized representative of a licensed
38 adoption agency, provides all of the following ~~to the local child~~
39 ~~protective services agency~~ or to the peace officer who is at the
40 hospital to take the minor into temporary custody:

1 ~~(i) A copy of the Health Facility Minor Release Report with the~~
2 ~~signed notice to the birth parent or birth parents as described in~~
3 ~~subparagraph (B):~~

4 ~~(ii) A copy of the petition for adoption or a statement signed by~~
5 ~~either the prospective adoptive parents or an authorized~~
6 ~~representative of the adoption agency, that this child is the subject~~
7 ~~of a proposed adoption:~~

8 ~~(iii) A copy of a written statement that the prospective adoptive~~
9 ~~parents or adoption agency personnel will immediately notify the~~
10 ~~local child protective services agency if the adoption plan is~~
11 ~~terminated for any reason:~~

12 ~~(2) Notwithstanding Section 305 or subdivision (a) of this~~
13 ~~section, a peace officer may not, without a warrant, take into~~
14 ~~temporary custody a minor who is in a hospital if all of the~~
15 ~~following conditions exist:~~

16 ~~(A) The minor is a newborn who tested positive for illegal drugs~~
17 ~~or whose birth mother tested positive for illegal drugs:~~

18 ~~(B) The minor is the subject of a proposed adoption and a~~
19 ~~prospective adoptive parent or prospective adoptive parents have~~
20 ~~been licensed or certified to act as a foster parent or foster parents~~
21 ~~of the minor pending the filing or finalization of the petition for~~
22 ~~adoption:~~

23 ~~(C) The release of the minor to the prospective adoptive parent~~
24 ~~or prospective adoptive parents does not pose an immediate danger~~
25 ~~to the minor:~~

26 ~~(D) The prospective adoptive parent or parents or their~~
27 ~~representative provides to the local child protective services agency~~
28 ~~or to the peace officer who is at the hospital to take the minor into~~
29 ~~temporary custody a copy of the documents evidencing licensure~~
30 ~~as a foster parent or foster parents, as well as a written statement~~
31 ~~of their intent to adopt the child, and a written statement agreeing~~
32 ~~to notify the local child protective services agency if the adoption~~
33 ~~plan is terminated for any reason:~~

34 ~~(3) A copy of an adoption placement agreement signed by the~~
35 ~~placing birth parent or birth parents and the prospective adoptive~~
36 ~~parent or parents may be used in place of the Health Facility Minor~~
37 ~~Release Report and notice to the birth parent or birth parents as~~
38 ~~described in subparagraph (B) of paragraph (1):~~

39 ~~(4) A letter from a licensed adoption agency stating that the~~
40 ~~minor is placed with the prospective adoptive parents for the~~

~~purposes of adoption may be used in place of the Health Facility
Minor Release Report and notice to the birth parent or birth parents
as described in subparagraph (B) of paragraph (1).~~

(i) A fully executed copy of the Health Facility Minor Release Report.

(ii) A written form, developed by the department, signed by either the prospective adoptive parent or parents or a representative of the licensed adoption agency, which shall include all of the following:

(I) A statement that the minor is the subject of a proposed adoption.

(II) A declaration under penalty of perjury that the signer or signers will immediately notify the local child welfare agency pursuant to Section 11165.9 of the Penal Code if the adoption plan is terminated for any reason, and will not to release the minor to the birth parent or parents or any designee of the birth parent or parents until the local child welfare agency or local law enforcement agency completes an investigation and determines that release of the minor to the birth parent or parents or a designee of the birth parent or parents will not create an immediate risk to the health or safety of the minor.

(III) An agreement to provide a conformed copy of the adoption request to the local child welfare agency within five business days after filing.

(IV) The names, identifying information, and contact information for the minor, for each prospective adoptive parent, and for each birth parent, to the extent that information is known. In the case of an agency adoption where no prospective adoptive parent or parents are identified at the time of the minor's release from the hospital, the licensed adoption agency may provide the information as it pertains to the licensed or certified foster home into which the agency intends to place the minor.

(c) If the adoption plan for a minor who was released from the hospital pursuant to subdivision (b) is terminated for any reason, the prospective adoptive parent or parents or licensed adoption agency shall immediately notify the local child welfare agency. The prospective adoptive parent or parents or licensed adoption agency may not release the minor into the physical custody of the birth parent or parents, or any designee of the birth parent or parents, until the local child welfare agency or local law

1 *enforcement agency completes an investigation and determines*
2 *that release of the minor to the birth parent or parents or a*
3 *designee of the birth parent or parents will not create an immediate*
4 *risk to the health or safety of the minor.*

5 ~~(e)~~

6 *(d) Nothing in this section is intended to create a duty that*
7 *requires law enforcement to investigate the prospective adoptive*
8 *parent or parents.*

9 *SEC. 2. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section 17556 of*
15 *the Government Code, or changes the definition of a crime within*
16 *the meaning of Section 6 of Article XIII B of the California*
17 *Constitution.*